

Canada Industrial Relations Board



Conseil canadien des relations industrielles

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## Reasons for decision

Canadian Union of Postal Workers,

*applicant,*

*and*

Canada Post Corporation,

*employer,*

*and*

Canadian Postmasters and Assistants Association,

*certified bargaining agent,*

*and*

Association of Postal Officials of Canada,

*intervenor.*

Board File: 27915-C

Neutral Citation: 2011 CIRB 607

September 28, 2011

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The Board was composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Patrick J. Heinke and Norman Rivard, Members.

### **Counsel of Record**

Mr. Gaston Nadeau, for the Canadian Union of Postal Workers;

Ms. Mary J. Gleason, for Canada Post Corporation;

Mr. Sean T. McGee, for the Canadian Postmasters and Assistants Association;

Mr. George Rontiris, for the Association of Postal Officials of Canada.

These Reasons for Decision were written by Ms. Elizabeth MacPherson, Chairperson.

### **I–Nature of the Application**

[1] On January 21, 2010, the Canadian Union of Postal Workers (CUPW or the applicant) filed an application with the Canada Industrial Relations Board (the Board) pursuant to section 18.1 of the *Canada Labour Code (Part I – Industrial Relations)* (the *Code*). This application has been considered by a panel of the Board composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Patrick J. Heinke and Norman Rivard, Members.

[2] The applicant requests that the Board conduct a review of the bargaining unit structure at Canada Post Corporation (CPC or the employer). CUPW's objective in requesting this review is to create a single bargaining unit comprised of the urban operations unit that it currently represents, the rural and suburban service unit that it also represents and employees in the rural post offices currently represented by the Canadian Postmasters and Assistants Association (CPAA). The Association of Postal Officials of Canada (APOC), which represents a bargaining unit that could be impacted by a bargaining unit review, was granted intervenor status in the application.

[3] In a decision issued on May 16, 2011, *Canada Post Corporation*, 2011 CIRB LD 2558, the Board dismissed a motion brought by CPC seeking to have the application dismissed as premature. In that decision, the Board indicated that it would deal with the application on its merits, commencing with an inquiry into the threshold question of whether the existing bargaining units are no longer appropriate for collective bargaining. The parties were given a period of time in which to make any additional written submissions on this question that they wished the Board to consider. The

pleadings closed with the receipt of CUPW's reply submissions on July 21, 2011. Having considered the parties' original and supplementary submissions, the Board is satisfied that it can decide this matter on the basis of the written record and accordingly exercises its discretion under section 16.1 of the *Code* not to hold an oral hearing.

## **II-Background**

[4] The last comprehensive review of the bargaining unit structure at CPC was conducted over a nine year period, from 1985 to 1994. The bargaining unit structure that existed when CPC was created in 1981 was a legacy from the period when the postal service was a government department, subject to the *Public Service Staff Relations Act*. At that time, public service bargaining units were generally structured according to job classification. In the course of the 1985-94 proceedings, the predecessor to this Board, the Canada Labour Relations Board (CLRB), consolidated the 26 bargaining units at CPC into four units which it deemed appropriate for collective bargaining (see *Canada Post Corporation*, (1988) 73 di 66; and 19 CLRBR (NS) 129 CLRB no. 675) (*CPC 675*). For example, the letter carriers and inside postal operations workers, who had formerly been in separate bargaining units represented by different bargaining agents, were merged into a single operations unit that also included mechanics and maintenance staff formerly represented by the Public Service Alliance of Canada (PSAC) and the International Brotherhood of Electrical Workers (IBEW). Following the conduct of a representation vote, CUPW was certified to represent this bargaining unit (see interim order no. 5337-U, issued January 30, 1989 and amended on January 11, 1990 and final order no. 6586-U issued on December 8, 1994). This unit is now commonly referred to as the "urban operations" unit.

[5] During collective bargaining for the urban operations unit in 2003, the employer agreed to voluntarily recognize CUPW as the bargaining agent for a separate unit of rural and suburban mail carriers (RSMCs), who had until that time been classified as rural route contractors and excluded from collective bargaining by virtue of the *Canada Post Corporation Act*. At the time, the parties agreed that a bargaining unit composed only of rural route and suburban service contractors (now known as RSMCs) would be appropriate for collective bargaining and that a bargaining unit combining these employees with other CPC employees would not be appropriate for collective

bargaining. A separate, long-term collective agreement was subsequently negotiated for the RSMC unit. The Board recognized CUPW as the bargaining agent for the RSMC unit in a certification order issued on October 21, 2008 (order no. 9559-U).

[6] In its application, CUPW seeks to merge the two bargaining units that it is certified to represent, and also requests that the bargaining unit composed of staff in rural post offices, currently represented by the CPAA, be folded into the proposed new bargaining unit. CUPW suggests that some of the supervisory employees now represented by the CPAA could be included in the supervisory employees' bargaining unit represented by APOC.

### **III-Positions of the Parties**

#### **A-CUPW**

[7] CUPW submits that the current bargaining unit structure divides operations employees who do identical work into three separate units. It suggests that the rationale for this division, which is based on a distinction between urban and rural services, is artificial and has resulted in working conditions for the rural bargaining units that are inferior to those of the urban operations unit.

[8] CUPW suggests that the current structure does not allow employees, particularly those in the rural units, to adequately face the major technological changes that the Corporation has undertaken. Furthermore, CUPW argues, the present division of jurisdiction has been the source of disputes between the various bargaining units in the past and these disputes will intensify in the future.

[9] CUPW explains that employees in the urban operations unit perform the collection, transportation, processing, sortation and delivery of mail. Other employees in this unit are responsible for building, equipment and vehicle maintenance or work in CPC's retail network. The rural and suburban mail carriers perform mail collection, sortation and delivery. CUPW submits that the work performed by rural and suburban mail carriers is exactly the same as the work of urban

letter carriers. The rural post office employees perform mail collection, processing and sortation and carry out retail activities in rural post offices that CUPW submits is the same as the work done by employees in urban post offices.

[10] CUPW submits that the existence of three bargaining units for operations employees is an anomaly. It suggests that a basic principle of bargaining unit determination is that employees who perform the same work should be grouped together in a single bargaining unit. It suggests that with the advent of technology, the similarity of tasks for employees assigned to internal operations, whether urban or rural, has become even more striking. While admitting that most urban letter carriers deliver mail on foot while suburban and rural carriers use vehicles, CUPW suggests that there is no difference between the duties and responsibilities of urban, suburban and rural mail carriers and that they all use the same work methods and follow the same rules and directives. CUPW suggests that any current differences will lose relevance when, as a result of technological changes, a majority of urban carriers will convert from on-foot delivery to motorized delivery. Accordingly, CUPW suggests that the continued existence of separate units cannot be explained or justified based on the characteristics of the work or the functions performed by the employees.

[11] CUPW submits that the distinction between urban and rural operations is artificial and outdated, and that the difference between urban and rural areas has become blurred. It notes that at the time of the last bargaining unit review, the rural and suburban service mail contractors were not entitled to benefit from the *Code*, and thus their situation was not considered in the CLRB's analysis, which confirmed an urban/rural distinction. It suggests that CPC's voluntary recognition of the RSMCs in 2003 was based on this pre-established framework, but that major changes have occurred since the CLRB rendered its 1988 ruling. In particular, CUPW points to the urbanization of rural areas. CUPW provided examples of areas once considered rural that are now either suburbs of large urban centres or medium-sized metropolitan areas in their own right.

[12] CUPW submits that the ambiguity in defining what constitutes a rural area has resulted in uncertainty on the dividing line between the jurisdictions of the respective bargaining agents. It suggests that, even from the date of the CLRB ruling, it has sometimes been difficult to determine where the dividing line is between urban operations and rural operations and that this has caused

conflicts in dealing with matters such as the application of Part II of the *Code* (Occupational Health and Safety). Given evolving demographics and social and economic changes, CUPW suggests that it is difficult to maintain a clear distinction between rural and urban areas and thus that this distinction is no longer appropriate or relevant.

[13] CUPW argues that the current structure of the bargaining units impedes employees' ability to deal with the major technological changes in which CPC is engaged that will transform all aspects of postal operations. In particular, it suggests that the introduction of a mechanized sort in delivery sequence ("sequencing") will lead to significant job losses in all groups of operations employees and will radically change letter carriers' work methods by reducing the time they spend on sorting and preparing the mail for delivery and increasing the amount of time that they spend actually delivering the mail. It suggests that this reorganization of delivery work will result in urban letter carriers making more widespread use of vehicles. CUPW suggests that this initiative, and the plan to consolidate mail processing in major centres, will lead to significant job losses in the urban operations unit. CUPW argues that the technological changes being undertaken by CPC require that there be a single bargaining unit for urban, suburban and rural operations.

[14] Additionally, CUPW suggests that the existence of three separate bargaining units prevents worker mobility, and is particularly detrimental to employees in the rural bargaining units. In CUPW's submission, this inability to move from one bargaining unit to another affects the parties' ability to find equitable solutions to problems such as job losses resulting from technological change.

[15] CUPW further suggests that the fact that the two rural units have been unable to achieve working conditions equivalent to those of the urban operations unit is evidence that those bargaining units are inappropriate for collective bargaining. It points to the disparities in the wage rates for urban letter carriers (starting at \$22.40 per hour in 2009) and those of rural and suburban mail carriers (between \$13.42 and \$19.32 per hour) and the technological change provisions as evidence that the rural employees have lower terms and conditions of employment than their urban colleagues. It suggests that this is due to an imbalance of bargaining power, which is in part due to the fact that

the rural and suburban employees are spread out in thousands of post offices across Canada. It suggests that merging the rural bargaining units into a single unit with the urban operations employees is the only way to ensure a balance of bargaining power with the employer.

[16] CUPW concludes that the current bargaining unit structure does not reflect the principles commonly used to determine an appropriate bargaining unit, and particularly the principle that employees who perform the same functions should be in the same bargaining unit. It suggests that the existence of three bargaining units has made negotiations more difficult and reiterates that the coming technological changes will affect rural and suburban postal workers as well as urban operations staff, necessitating a revision of the bargaining unit structure to allow all of these employees to bargain together.

#### **B-CPC**

[17] CPC disputes CUPW's allegations, suggests that the applicant's arguments are fundamentally flawed and submits that the section 18.1 application is ill-founded and should be dismissed.

[18] CPC asserts that employees in the CPAA, urban operations and RSMC bargaining units do not perform identical work and that their jobs and working conditions are fundamentally different. It submits that CPAA members work in offices where there are no postal clerks or letter carriers and that CUPW agreed in 2003 that RSMCs should be in their own separate bargaining unit. Because the functions and work experiences of the members of the three units are different, CPC argues that it is appropriate for them to remain in separate bargaining units. CPC suggests that the technological changes or "postal transformation" that will be introduced over the next few years are expected to have very little impact on the CPAA or RSMC bargaining units. CPC submits that the technological changes it is making will really impact only the urban operations unit, a factor which highlights the lack of community of interest between that unit and the two other units that CUPW is seeking to merge into it. CPC argues that, in any event, technological change is not grounds for a bargaining unit review unless it blurs distinctions between jobs and creates jurisdictional difficulties, which is not the case here.

[19] Furthermore, CPC states that there are no labour relations difficulties that would warrant a bargaining unit review. It suggests that arguments regarding the composition of the Occupational Health and Safety Policy Committees result mainly from CUPW's unwillingness to collaborate with other bargaining agents, rather than evidence of structural problems with the current bargaining unit structure. In CPC's view, there is no reason to disturb the decision made by the Board in 1988 and finalized in 1994 regarding the appropriateness of the CPAA bargaining unit. That decision was issued in the context of an exhaustive examination of CPC's business that took nearly a decade to complete.

[20] Likewise, CPC submits that there is no reason for the Board to overturn its 2008 decision determining that a separate RSMC bargaining unit was appropriate. CPC reminds the Board that its voluntary recognition of CUPW as the bargaining agent for RSMCs in 2003 expressly included an agreement that a separate unit for RSMCs was appropriate and that these employees should not be included in a bargaining unit with any other CPC employees. It suggests that the Board should not countenance CUPW's flagrant breach of the bargain it made with CPC in 2003.

[21] CPC asserts that there is no community of interest between RSMCs and members of the urban operations unit or between members of the CPAA unit and the urban operations unit, nor has there ever been any confusion regarding the boundaries of the various units. CPC states that for the last decade, its labour relations have been functional, with many collective agreements settled without work disruption. Employee satisfaction and engagement has improved, as evidenced by independent surveys. In particular, CPAA members exhibit significantly higher employee engagement scores than those of CUPW members.

[22] CPC suggests that its labour relations with the units affected by this application have been stable in the past several years and that this labour relations stability might well be negatively impacted by the merger proposed by CUPW. CPC points out that in the period since the application was filed, it has concluded a collective agreement with the CPAA that included the referral of one issue to an interest arbitrator. Negotiations for the RSMC collective agreement have been referred to a mediator/arbitrator for final determination. CPC admits that negotiations with CUPW for the urban operations unit reached an impasse in 2011 that resulted in the enactment by Parliament of *ad hoc*

legislation to resolve the dispute and impose final offer selection arbitration on the parties. CPC contends that the working conditions in the urban operations and RSMC units represented by CUPW are very distinct, and thus that the issues in bargaining are different.

[23] CPC suggests that CUPW is attempting to illegitimately use the bargaining unit review process to obtain tactical advantages in collective bargaining. It notes that the Board's jurisprudence consistently holds that review applications filed in an effort to obtain greater bargaining strength are not a proper use of the bargaining unit review process. It points out that CPAA agreed to a short-term disability program that CUPW has rejected for both the urban operations and RSMC units, and suggests that this demonstrates that employees in the CPAA unit do not share a community of interest with the CUPW units and would lose their voice if they were to be added to a bargaining unit represented by CUPW.

[24] CPC argues that, as the applicant, CUPW has not met its legal or factual burden of proof—to establish that the current bargaining units are no longer appropriate for collective bargaining. Indeed, argues CPC, the merged bargaining unit that CUPW seeks is more likely to worsen labour relations between the parties.

#### **C-CPAA**

[25] The CPAA has represented employees working in rural post offices since 1902. It currently represents some 11,500 employees in rural and suburban post offices, of whom some 3600 are full-time and the remainder part-time or term employees. The CPAA opposes CUPW's application on the basis that, among other things, there is no evidence that the current units are no longer appropriate for collective bargaining.

[26] The CPAA argues that when the CLRB confirmed the continued appropriateness of its bargaining unit in the 1985-1994 bargaining unit review (*CPC 675*), it determined that there were real differences between the needs and conditions of employees in rural post offices and those in larger and urban centres. CPAA suggests that the differences identified by the CLRB at that time continue to exist, despite the recent certification by the Board of the RSMC bargaining unit.

[27] CPAA explains that there are 3450 offices in Canada staffed by CPAA members. RSMCs work from approximately 1400 of these offices. In CPAA staffed offices, there is no specialization; the union's members perform almost all of the duties (for example, counter service, breaking down of mail, mail dispatch, redirection, complaint investigation, sales, property maintenance, etc.). In those offices where there are RSMCs, these employees do not work on retail counters, order retail and office supplies or perform a daily balance, as the CPAA employees do. In the urban offices staffed by CUPW members, most of the employees are assigned to specific functions, such as mail delivery or counter clerk.

[28] The CPAA further explains that it has historically taken a different approach to collective bargaining than that adopted by CUPW. CPC and CPAA have voluntarily implemented final offer selection for the resolution of interest disputes that cannot be resolved through bargaining, as the CPAA has a no-strike policy. In recognition of the different factors at play in a rural working environment, the CPAA collective agreement contains terms and conditions of employment that are significantly different than those applicable to the urban services bargaining unit.

[29] When CPC voluntarily recognized CUPW to represent the RSMCs in 2003, the CPAA challenged CUPW's right to represent these workers. In 2005, the CPAA's complaints were settled through an agreement that recognized the appropriateness of the current bargaining unit structure. The CPAA argues that CUPW should not be permitted to repudiate this agreement by seeking the merger of the CPAA unit with the two units that CUPW represents.

[30] CPAA also argues that one of the factors that caused the CLRB to merge the Letter Carriers Union of Canada (LCUC) and CUPW units in 1988 was that the merger would improve the parties' ability to accommodate disabled workers. CPAA suggests that this is no longer a relevant consideration, as the parties understand and accept that the existence of different collective agreements cannot be raised as a bar to accommodation under the *Canadian Human Rights Act*.

[31] The CPAA asserts that the organizational structure used for rural delivery is significantly different than that of urban delivery and that these differences are reflected in the working conditions

of its members and the provisions of their collective agreement. It states that, while changes implemented by CPC since 1988 may have impacted the operation of urban offices, they have had little impact on the rural offices. In particular, the rural offices have been much less impacted by the technological changes implemented by CPC.

[32] The CPAA denies that there are any jurisdictional issues between it and CUPW that negatively impact the implementation of Part II of the *Code* (Occupational Health and Safety). In March 2009, the CPAA and CUPW signed an agreement setting out the procedure for electing a health and safety representative in offices where both unions have members.

[33] Furthermore, the CPAA argues that rural post offices are often seen as the heart of their communities. This distinction has led to a national moratorium on the closure of rural post offices which remains in effect today. CPAA suggests that its members view their relationship with the local community differently and often know their customers on a first name basis. They view themselves as ambassadors for CPC in the community.

[34] The CPAA suggests that CUPW has a militant history with CPC, as evidenced by the number of grievances it files each year and the number of work stoppages it has engaged in as a result of disputes with the employer. In contrast, CPAA has adopted and maintained a conciliatory approach which has the approval of its members. It argues that it has been able to bargain collective agreements, file and resolve grievances, and address members' concerns and that there is no evidence that the bargaining unit that it represents is no longer appropriate for collective bargaining.

#### **D-APOC**

[35] APOC was granted intervenor status in this application on March 15, 2010. It takes no position on whether the Board should undertake a bargaining unit review, but provided the Board with submissions explaining the role that its members play within CPC. APOC members fulfill a number of supervisory functions in both the large urban centres and with respect to suburban and rural CPC operations. In suburban and rural centres, CPAA members report to Local Area Superintendents represented by APOC. In APOC's view, the bargaining unit of supervisory employees that it

represents remains appropriate for collective bargaining, as its members have a community of interest that is distinct from those represented by CUPW. However, it suggests that the change requested by CUPW would have an impact on the supervision of employees that could make it appropriate to include postmasters (currently CPAA members) who have supervisory functions in the APOC unit.

#### **E-PSAC**

[36] The PSAC declined the Board's invitation to make submissions regarding the application, as CUPW's proposed unit did not relate to the administrative personnel it represents at CPC.

#### **IV-Analysis and Decision**

[37] Section 18.1 of the *Code* reads as follows:

18.1(1) On application by the employer or a bargaining agent, the Board may review the structure of the bargaining units **if it is satisfied that the bargaining units are no longer appropriate for collective bargaining.**

(2) **If the Board reviews**, pursuant to subsection (1) or section 35 or 45, the structure of the bargaining units, the Board

(a) must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from the review; and

(b) may make any orders it considers appropriate to implement any agreement.

(3) If the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board determines any question that arises and makes any orders it considers appropriate in the circumstances.

(4) For the purposes of subsection (3), the Board may

(a) determine which trade union shall be the bargaining agent for the employees in each bargaining unit that results from the review;

(b) amend any certification order or description of a bargaining unit contained in any collective agreement;

(c) if more than one collective agreement applies to employees in a bargaining unit, decide which collective agreement is in force;

(d) amend, to the extent that the Board considers necessary, the provisions of collective agreements respecting expiry dates or seniority rights, or amend other such provisions;

(e) if the conditions of paragraphs 89(1)(a) to (d) have been met with respect to some of the employees in a bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the unit or the conditions of those paragraphs are met with respect to the unit; and

(f) authorize a party to a collective agreement to give notice to bargain collectively.

(emphasis added)

[38] Section 18.1 was added to the *Code* in 1999 as a result of the recommendations of *Seeking a Balance: Canada Labour Code, Part I, Review* (Ottawa: Human Resources Development Canada, 1995) (the Sims Report). In that report, the authors observed:

Because of the substantial disruption and expense, such [bargaining unit] reviews should be undertaken only if directly affected parties can satisfy the Board that there are serious problems with the current bargaining unit structures. Otherwise there is no justification for interfering with the employees' choice of bargaining agent.

(page 69)

[39] The wording of section 18.1 of the *Code* makes it clear that a review of bargaining unit structure is not available merely because one party or the other makes an application to that effect. Before the Board launches a full scale bargaining unit structure review, it must be satisfied that the existing bargaining units which make up that structure are no longer appropriate for collective bargaining. The applicant has the onus of presenting convincing evidence as to why the existing structure is no longer appropriate (see *Rogers Cablesystems Limited*, 2000 CIRB 51; and *Canadian Broadcasting Corporation*, 2003 CIRB 253).

[40] The preliminary issue that the Board has to deal with in an application under section 18.1 of the *Code* is not whether there is arguably some better bargaining unit configuration than that which presently exists, but whether the bargaining units that make up the current structure are no longer appropriate. In making its determination as to the appropriateness of the existing bargaining units, the Board looks at their history and current status in order to determine the effectiveness of the current bargaining unit structure and the best way to balance the interests of the employees, their bargaining agents and the employer. Furthermore, in a bargaining unit review, the Board is not restricted by the applicant's proposal as to how the structure should be revised. The overarching goal of the Board is to ensure effective collective bargaining and harmonious labour-management relations. The mere fact that two units are represented by the same bargaining agent is not, in and

of itself, a sufficient reason on which to base a conclusion that the current bargaining units are no longer appropriate for collective bargaining (see *Canadian National Railway Company*, 2009 CIRB 446).

#### **A—Urban Operations unit**

[41] The urban operations group is the largest bargaining unit at CPC, comprising approximately 42,000 employees. CUPW has been the certified bargaining agent for this unit since 1989. Relations between the parties have been acrimonious at times, although more often than not the parties have demonstrated the ability to negotiate collective agreements without resorting to strike or lockout activity. In 1997, the employees in this bargaining unit were legislated back to work by Parliament after a brief work stoppage. The legislation provided that the remaining issues in dispute between the parties were to be resolved by binding mediation/arbitration. However, the parties were able to reach a negotiated agreement before the interest arbitration process was completed. Thereafter, CUPW and CPC were successful in reaching agreement on renewals to the collective agreement in 2003 and 2007. Negotiations for renewal of the collective agreement that expired January 31, 2011 were unsuccessful and a work stoppage was once again terminated by Parliamentary intervention in June 2011. The Board has no difficulty in concluding that the decision it made to create this unit in 1988 was a sound one, and that it has been effective in labour relations terms.

#### **B—RSMC unit**

[42] CUPW was voluntarily recognized by CPC to represent the then rural route and suburban mail contractors in 2003. Some 7400 contractors were converted to employee status and the parties reached an eight-year collective agreement establishing their terms and conditions of employment. This agreement will expire on December 31, 2011; reopeners in 2005 and 2007 were settled in direct bargaining. On application by CUPW, the Board confirmed that this unit was appropriate for collective bargaining in a certification order issued on October 21, 2008.

[43] Subsequent to the filing of this application, the parties engaged in negotiations for the renewal of the collective agreement and agreed that any issues they were unable to resolve through the negotiation process would be resolved by binding interest arbitration. The Board has been informed that a mediator/arbitrator has been appointed to assist the parties in concluding a new collective agreement.

[44] The Board notes that, at the time that CPC voluntarily recognized CUPW as the bargaining agent for this unit in 2003, CUPW agreed that a bargaining unit composed only of rural route and suburban service employees (now RSMCs) was appropriate for collective bargaining, and that "combining RRSSCs [now RSMCs] with other Canada Post employees would not be appropriate for collective bargaining and would give rise to significant labour relations difficulties." As the Board noted in *Canada Post Corporation*, 2009 CIRB 438, it retains absolute discretion to determine the unit that the Board considers appropriate for collective bargaining and is not bound by any agreement between the parties as to the scope of a bargaining unit. Nevertheless, the Board does take cognizance of the fact that the parties did have an agreement regarding the appropriateness of the RSMC bargaining unit that CUPW now seeks to repudiate. Despite its express agreement in 2003 that it would not be appropriate to include RSMCs with other CPC employees, CUPW now states that it only made this agreement in order to obtain collective bargaining rights for the RSMCs and that it never believed that a separate unit was appropriate. Nevertheless, CUPW approached the Board as recently as 2008, submitting that a separate RSMC unit was appropriate.

[45] Although CUPW has advanced various arguments as to why the Board should merge the two bargaining units that it represents, it has not adduced any evidence to suggest that the RSMC bargaining unit, which at CUPW's request was found by the Board to be appropriate for collective bargaining as recently as October 2008, is no longer appropriate for collective bargaining. The history of bargaining for this unit to date indicates that the parties have been successful in reaching agreements. Applying its standard criteria as outlined above, the Board can find no persuasive labour relations reason to conclude that the RSMC bargaining unit is no longer appropriate for collective bargaining.

## C-CPAA unit

[46] As noted earlier, the CPAA has existed since 1902 and the appropriateness of its bargaining unit was confirmed by the CLRB in 1988 in *CPC 675*. In that decision, the CLRB said:

... We have reached the conclusion that the distinction between urban and rural services is real and must be maintained. The consequence of this determination is that those employees currently represented by CPAA working in the rural offices should maintain a status of their own and continue to be represented by CPAA.

...

It is not unfair to say that, pursuant to all relevant criteria, the employees currently represented by CPAA (with the possible exception to be dealt with later in these reasons) are separate and distinct from the remainder of the operational unit. The employees have historically approached collective bargaining differently than has either LCUC or CUPW. Their needs and desires are different as a result of their respective working conditions. The provisions of their collective agreements graphically demonstrate these differences. They do not work in conjunction with other Corporation employees involved in the handling of mail. They are in offices where one finds CPAA members only. They work in an entirely rural environment, have their roots in the community and may play a major role in the community they serve. Although the essential nature of the work that they perform is similar to other Corporation "operational" offices where LCUC and CUPW members are employed, they are, for the most part, self-contained entities. In keeping with our stated objectives, we would see no advantage either to the employees themselves or to the Corporation in including the current CPAA members in a wider operational bargaining unit.

(pages 94-95; and 157-158)

[47] Although CUPW may be correct that, at a high level, the work of urban and rural postal workers is similar (the collection, sortation and delivery of mail), CPC and CPAA's evidence is that the organization of this work is done differently in rural offices: CPAA members perform a broader range of tasks and do not specialize to the extent that urban postal workers do. The applicant has not persuaded the Board that the distinction between urban and rural services that the Board found important in 1988 no longer exists or is likely to be eliminated in the near future.

[48] There has never been a labour dispute between the CPC and CPAA that resulted in a work stoppage. Ordinarily, their negotiations are settled in direct bargaining, although the collective agreement provides that any interest disputes are to be resolved through a final offer selection process. The Board has been informed that in the current round of bargaining, the parties have submitted one issue to arbitration.

[49] In the Board's view, the applicant has not made out a convincing case that the CPAA unit is no longer appropriate for collective bargaining. The history of bargaining with respect to this unit and the evidence submitted by CPC and CPAA indicate that their labour relationship has been and remains positive. Indeed, they appear to have established and maintained the constructive labour management relationship that is encouraged by the *Code*. The parties to this relationship both oppose the application and the Board is reluctant to tamper with a bargaining unit configuration that is so evidently successful.

#### **V—Conclusion**

[50] In the instant case, the applicant has not persuaded the Board that any of the three existing bargaining units it seeks to merge are no longer appropriate for collective bargaining. Given this finding on the threshold question, the Board declines to undertake the bargaining unit review requested by the applicant. The application is dismissed.

[51] This is a unanimous decision of the Board.

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Elizabeth MacPherson  
Chairperson

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Patrick J. Heinke  
Member

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Norman Rivard  
Member